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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 NATIONAL ABORTION FEDERATION (NAF),

14 Plaintiff,

15 v.

16 THE CENTER FOR MEDICAL PROGRESS,
17 BIOMAX PROCUREMENT SERVICES LLC,
18 DAVID DALEIDEN (aka "ROBERT SARKIS"),
and TROY NEWMAN,

19 Defendants.

Case No. 3:15-cv-3522-WHO

Judge: Hon. William H. Orrick, III

**NATIONAL ABORTION
FEDERATION (NAF)'S
ADMINISTRATIVE MOTION TO
FILE CERTAIN DOCUMENTS
UNDER SEAL**

Date Action Filed: July 31, 2015
Trial Date:

Pursuant to Civil L.R. 7-11 and 79-5, Plaintiff National Abortion Federation (“NAF”) respectfully requests leave of Court to file under seal certain documents as follows:

REQUIRED CERTIFICATIONS

Pursuant to the Court’s Standing Order of Administrative Motions to File Under Seal, NAF makes the following statements:

1. NAF certifies that it has reviewed and complied with the Court’s Standing Order of Administrative Motions to File Under Seal.
2. NAF certifies that it has reviewed and complied with Civil Local Rule 79-5.
3. NAF identifies the documents to be sealed as follows:
 - NAF’s Letter to the Court Regarding Violations of the Court’s TRO.
4. NAF is the entity that has designated the above document as confidential information that should be filed under seal.
5. NAF requests that the document listed above be filed under seal because it identifies sources of NAF confidential material that is being published in violation of the Court’s Order granting NAF’s motion for a temporary restraining order (“TRO”). (Dkt. 27.) Public access to this letter will alert mainstream media to this source, resulting in widespread dissemination of NAF’s confidential information in violation of this Court’s order as well as harm to NAF and NAF’s members. NAF requests sealing for a limited time in order to attempt to remove NAF’s confidential information from public access and prevent further dissemination of this material.
6. NAF certifies that it has provided all other material required by the Local Rule, including courtesy copies in the correct format.

ARGUMENT

The Ninth Circuit has held that the presumption of access to judicial records does not apply where the documents at issue are being filed in connection with a non-dispositive motion. *See In re Midland Nat’l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012) (recognizing an exception to the presumption of access to judicial records in the context of non-dispositive motions, and stating that, “[u]nder the exception, the usual presumption of the

1 public's right of access is rebutted" (citation and internal quotation marks omitted)). In such
2 circumstances, the appropriate legal standard is "good cause" and the court may issue "any order
3 which justice requires to protect a party or person from annoyance, embarrassment, oppression, or
4 undue burden or expense." *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th
5 Cir. 2006) (citing Fed. R. Civ. P. 26(c)). Here, there is no question that the parties' Joint
6 Discovery Letter is not a dispositive motion, and that the "good cause" standard therefore applies.

7 NAF has met the good cause standard here. The document NAF seeks to seal, NAF's
8 letter to the Court regarding violations of the Court's TRO, identifies sources that have obtained
9 NAF's confidential information from NAF's annual meetings and that have published this
10 information in violation of the Court's TRO. (*See* Dkt. 27 at 1:20-21, 24-25.) Public disclosure
11 of this letter will result in widespread dissemination of these sources, permitting public access to
12 NAF's confidential information in violation of the TRO and subjecting NAF and NAF's members
13 to substantial harm. (*See, e.g.*, NAF's Amended Administrative Mot. to File Under Seal, Dkt. 71,
14 at 3:12-5:13 (describing why sealing documents discussing NAF confidential information and
15 revealing NAF member names is necessary to prevent harassment, intimidation, violence, and
16 invasion of privacy against NAF and named individuals).) NAF seeks limited relief for a short
17 period of time as it works to remove NAF's confidential information from public access. NAF's
18 request to seal this information is narrowly tailored to protect NAF's confidential information,
19 prevent NAF's members from suffering substantial harm, and uphold the Court's TRO.

20 CONCLUSION

21 For the reasons stated above, NAF respectfully requests that the Court file under seal
22 NAF's letter regarding violations of the Court's TRO.

23 Dated: October 22, 2015

CHRISTOPHER L. ROBINSON
MORRISON & FOERSTER LLP

24 By: /s/ Christopher L. Robinson
25 Christopher L. Robinson

26 Attorneys for Plaintiff
27 NATIONAL ABORTION FEDERATION
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